

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<b>ALLAN KUEHNEMUND et al.</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>vs.</b>	)	<b>07-cv-83E</b>
	)	
<b>AGRIUM, INC,</b>	)	
	)	
<b>Defendant</b>	)	

**MEMORANDUM OPINION**

Pending before the Court is Plaintiff's Motion for Default Judgment (Pursuant to Civil Rule 55(a)) [Doc. #19]. The basis for Plaintiff's motion is that Defendant was served with Plaintiff's Amended Complaint and a summons on September 17, 2007 and did not answer Plaintiff's Amended Complaint within 20 business days of September 17, 2007. Motion for Default Judgment, p. 2.

Fed.R.Civ.P. 12 (a)(1)(A) provides that "[u]nless a different time is prescribed in a statute of the United States, a defendant shall serve an answer (A) within 20 days after being served with the summons and complaint." This deadline then would have been October 9, 2007, but said deadline was extended by an additional 20 days once Plaintiff filed his Second Amended Complaint on September 13, 2007.


Ultimately, of course, Defendant did not file an answer to Plaintiff's Amended Complaint. Instead, on October 12, 2007, Defendant filed a motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(2) and (3) for lack of personal jurisdiction and improper venue [Doc. # 16]. A defendant may respond to a complaint by filing a motion to dismiss in lieu of filing an answer.

Accordingly, Plaintiff's Motion for Default Judgment is denied.

On a final note, first, in the hope of preempting another motion from Plaintiff, the Court is making Plaintiff aware that the time period for filing an answer is altered when, as has occurred in this case, a defendant files a motion under Rule 12(b). See Fed.R.Civ.P. 12(a)(4) (“[u]nless a different time is fixed by court order, the service of a motion permitted under this rule alters these periods of time as follows: (A) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court’s action.”). Here, given that Defendant has filed a motion to dismiss pursuant to Rule 12(b)(2) and (3), this motion has extended Defendant's time to file an answer to Plaintiff's Amended Complaint until ten (10) days after receiving notice of our action on Defendant’s motion to dismiss. See Fed.R.Civ.P. 12(a)(4)(A).

Second, Defendant’s request for its attorney fees for having to respond to such a frivolous motion is denied.

November 1, 2007.

  
Maurice B. Cohill, Jr.  
Senior District Court Judge

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